

#### § 417.634

(2) The HMO or CMP must be made a party to the hearing but does not have a right to request a hearing.

(d) *ALJ action when the amount in controversy is less than \$100.* (1) If the request plainly shows that the amount in controversy is less than \$100, the ALJ dismisses the request.

(2) If, after a hearing is initiated, the ALJ finds that the amount in controversy is less than \$100, he or she discontinues the hearing and does not rule on the substantive issues raised in the appeal.

[50 FR 1346, Jan. 10, 1985; 50 FR 20570, May 17, 1985, as amended at 60 FR 46234, Sept. 6, 1995; 62 FR 25855, May 12, 1997]

#### § 417.634 Departmental Appeals Board (DAB) review.

Any party to the hearing, including the HMO or CMP, who is dissatisfied with the hearing decision, may request the DAB to review the ALJ's decision or dismissal. Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are applicable to DAB review for matters addressed by this subpart.

[62 FR 25855, May 12, 1997]

#### § 417.636 Court review.

(a) *Review of ALJ's decision.* A party or the HMO or CMP may request judicial review of an ALJ's decision if—

(1) The Departmental Appeals Board denied the party's or the HMO's or CMP's request for review; and

(2) The amount in controversy is \$1,000 or more.

(b) *Review of Departmental Appeals Board decision.* A party or the HMO or CMP may request judicial review of the Departmental Appeals Board decision if—

(1) It is the final decision of HCFA; and

(2) The amount in controversy is \$1,000 or more.

(c) *Request for review.* The civil action must be filed in a district court of the United States in accordance with section 205(g) of the Act (see 20 CFR 422.210 for a description of the proce-

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dures to follow in requesting judicial review).

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38083, July 15, 1993; 61 FR 32348, June 24, 1996]

#### § 417.638 Reopening determinations and decisions.

An organization, reconsidered, or revised determination made by an HMO, CMP, or HCFA, or a decision or revised decision of an ALJ or the Departmental Appeals Board, may be reopened in accordance with the provisions of § 405.750 of this chapter.

[59 FR 59942, Nov. 21, 1994, as amended at 61 FR 32348, June 24, 1996]

### Subpart R—Medicare Contract Appeals

SOURCE: 50 FR 1346, Jan. 10, 1985, unless otherwise noted.

#### § 417.640 Determinations subject to appeal.

This subpart establishes the procedures for making and reviewing the following initial determinations:

(a) A determination that an HMO or CMP is not qualified to enter into a contract with HCFA under section 1876 of the Act.

(b) A determination that an HMO or CMP is qualified only for a reasonable cost contract.

(c) A determination to terminate, or to refuse to renew, a contract with an HMO or CMP because—

(1) The HMO or CMP has failed substantially to carry out the terms of the contract;

(2) The HMO or CMP is carrying out the contract in a manner that is inconsistent with the efficient and effective administration of section 1876 of the Act;

(3) The HMO or CMP no longer meets the applicable conditions necessary to qualify as an HMO or CMP under section 1876 of the Act and this subpart; or

(4) The HMO or CMP has failed to comply with the composition of enrollment requirements specified in § 417.413(d).

[50 FR 1346, Jan. 10, 1985, as amended at 56 FR 46572, Sept. 13, 1991; 58 FR 38080, July 15, 1993]

**§ 417.642 Administrative actions that are not initial determinations.**

Administrative actions that are not initial determinations under this subpart include, but are not limited to, HCFA's refusal to renew a contract with an HMO or CMP when the refusal is not based on the causes specified in § 417.640(c).

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38080, July 15, 1993]

**§ 417.644 Notice of initial determination.**

(a) When HCFA makes an initial determination, it gives the HMO or CMP written notice.

(b) The notice specifies—

(1) The reasons for the determination; and

(2) The HMO's or CMP's right to request reconsideration.

(c) HCFA mails the notice to the HMO or CMP at least 90 days before the end of the contract period, or in the case of termination, at least 90 days before the effective date of the termination.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38083, July 15, 1993; 60 FR 46234, Sept. 6, 1995]

**§ 417.646 Effect of initial determination.**

The initial determination is final and binding on all parties unless—

(a) It is reconsidered in accordance with §§ 417.648 through 417.658;

(b) In the case of an initial determination described in § 417.640(c), a request for a hearing is filed; or

(c) It is revised as a result of a reopening under § 417.692.

**§ 417.648 Reconsideration: Applicability.**

(a) Reconsideration is the first step for appealing an organization determination specified in § 417.640(a) or (b).

(b) HCFA reconsiders either of the specified determinations if the HMO or

CMP files a written request in accordance with § 417.650.

[60 FR 46234, Sept. 6, 1995]

**§ 417.650 Request for reconsideration.**

(a) *Method and place for filing a request.* A request for reconsideration must be made in writing and filed with any HCFA office.

(b) *Time for filing a request.* Except as provided in paragraph (c) of this section, the request for reconsideration must be filed within 60 days from the date of the notice of the initial determination.

(c) *Extension of time to file a request.* HCFA may, in response to a party's written petition showing good cause, accept a request for reconsideration after the expiration of the 60 day period.

(d) *Proper party to file a request.* Only an authorized official of the entity that was a party to an initial determination may file the request for reconsideration.

(e) *Withdrawal of a request.* A request for reconsideration may be withdrawn by the party who filed the request at any time before the notice of the reconsidered determination is mailed. The request for withdrawal must be in writing and filed with HCFA. If HCFA approves, the request for reconsideration is withdrawn.

**§ 417.652 Opportunity to submit evidence.**

HCFA provides the parties to the reconsideration reasonable opportunity to present as evidence any documents or written statements that are relevant and material to the matters at issue.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

**§ 417.654 Reconsidered determination.**

A reconsidered determination is a new determination that—

(a) Is based on a review of the initial determination, the evidence and findings upon which that was based, and any other written evidence submitted before notice of the reconsidered determination is mailed, including facts relating to the status of the entity subsequent to the initial determination; and